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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JESUS ROMERO, a Minor, by and
11 through his Guardian ad Litem,
12 MERIDA RAMOS; MARCOS
13 ROMERO, a Minor, by and through
14 his Guardian ad Litem, MERIDA
RAMOS; and PERLA ROMERO, a
Minor, by and through her Guardian
ad Litem, MERIDA RAMOS,

Plaintiff,

15 v.

16
17 MACY'S, INC., fka FEDERATED
18 DEPARTMENT STORES, INC., a
19 Delaware corporation; RALPH
LAUREN CORPORATION, a
Delaware corporation; and DOES 1
through 50, Inclusive,

20 Defendant.
21

CASE NO. 15cv815-GPC(MDD)

**ORDER GRANTING IN PART AND
DENYING IN PART SCHWAB
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

[Dkt. No. 80.]

22 Before the Court is Schwab Defendants' motion for summary judgment. (Dkt.
23 No. 80.) Plaintiffs filed an opposition to Defendants' motion, (Dkt. No. 97), and
24 Defendants filed a reply. (Dkt. No. 98.) Based on the reasoning below, the Court
25 GRANTS in part and DENIES in part Schwab Defendants' motion for summary
26 judgment.

27 **Background**

28 On April 13, 2015, the case was removed from state court. (Dkt. No. 1.) On

1 August 18, 2015, Plaintiffs filed a first amended complaint against Defendants Macy's
 2 Inc., Macy's West Stores, Inc., and Ralph Lauren Corporation's ("Macy Defendants")
 3 and added RL Childrenswear Company, LLC; S. Schwab Company, Inc.; Sylvia
 4 Company, LLC; Cuny Associates, LLC; LM Services, LLC; Samuel Schwab; Douglas
 5 Schwab; Tadd Schwab; and Amy Owens (collectively the "Schwab Defendants") as
 6 defendants.¹ (Dkt. No. 17.) The FAC alleges claims against Macy Defendants and
 7 Schwab Defendants for severe burns suffered by Plaintiff Jesus Romero, a minor at the
 8 time, when a shirt ("Shirt") allegedly purchased at Macy's caught fire after being
 9 exposed to a flame. Jesus claims that the Shirt was defective because it was not 100%
 10 cotton as stated on the label and the blend of fibers in the Shirt increased the risk of
 11 severe injury. Jesus asserts six causes of action against the designer and manufacturer
 12 of the shirt, Ralph Lauren and Schwab Defendants, and the seller, Macy's Inc. and
 13 Macy's West Stores, Inc. ("Macy's"), for manufacturing defect, design defect and
 14 failure to warn under strict products liability, negligence, breach of warranty and
 15 negligent misrepresentation.²

16 **Factual Background**

17 **A. The Incident**

18 On January 30, 2005, Jesus and his family were planning to go to the beach, eat
 19 lunch and go horseback riding in Rosarito, Mexico. (Dkt. No. 97-6, Ps' Evid., Ex. 17,
 20 Jesus Depo. at 34:10-16; Dkt. No. 97-6, Ps' Evid., Ex. 18, Merida Depo. at 17:12-18.)
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24
 25 ¹On September 16, 2015, the Court granted Defendants' motion for leave to file
 26 a third party complaint. (Dkt. No. 21.) On April 28, 2016, Macy Defendants filed a
 27 third party complaint for indemnification and other causes of action against the Schwab
 28 Defendants. (Dkt. No. 61.)

²Jesus' siblings, Marcos and Perla Romero, asserted a cause of action for
 negligent infliction of emotional distress based on a bystander theory. (Dkt. No. 17,
 FAC.) However, on October 13, 2016, the parties filed a joint motion to dismiss the
 claims of Marcos and Perla Romero. (Dkt. No. 95.)

1 After Jesus³ and his younger brother, Marcos, were dressed and waiting for the
 2 excursion, they went next door to a neighbor's house to use a lighter they had
 3 previously gotten in Mexico. (Dkt. No. 97-6, Ps' Evid., Ex. 17, Jesus Depo. at 61:18-
 4 23; 37:12-25; Dkt. No. 97-6, Ps' Evid., Ex. 18, Merida Depo. at 24:3-4; Dkt. No. 80-5,
 5 Ds' Evid., Ex. 1, Jesus Depo. at 38:25-39:25; 77:16-20.) Both were sitting down and
 6 while Jesus held the flower or green weed, Marcos lit the flower or weed with the
 7 lighter. (Dkt. No. 97-6, Ps' Evid., Ex. 17, Jesus Depo. 80:25-81:12; 83:10-84:24.)
 8 Jesus testified that he let go of the flower or weed because his fingers got hot and the
 9 lit flower or weed landed on his shirt near his stomach. (Id. at 90:21-91:6; 91:25-92:5.)
 10 Jesus told his brother to go get help so Marcos ran into the house and their father came
 11 out, ripped the shirt off, dropped it to the concrete and stepped on it to extinguish the
 12 flames. (Id. at 95:17-20; 100:11-22.)

13 On the day of the incident, Jesus was wearing a boys' short-sleeved Ralph
 14 Lauren red-and-white gingham button-down dress shirt. (Dkt. No. 97-6, Ps' Evid., Ex.
 15 18, Merida Depo. at 26:6-20; 77:8-17; 78:5-25; 153:2-8.) Jesus' mother, Merida,
 16 always checked the labels and bought 100% cotton clothing for her family. (Id. at
 17 42:22-43:6; 47:4-8.) Merida testified she purchased the shirt worn by Jesus at Macy's
 18 in Chula Vista, CA in July or August 2004. (Id. at 33:4-12; 35:1-11; 52:2-9.) She
 19 would not have purchased the shirt if it had not been labeled 100% cotton. (Id. at
 20 48:24-49:4; 49:25-50:4.)

21 Merida stated when she purchased the Shirt, she had her Macy's card. (Dkt. No.
 22 97-6, Ps' Evid., Ex. 18, Merida Depo. at 54:2-5.) Macy's credit card statements from
 23 the family does not show a record for the Shirt's purchase. (Dkt. No. 80-11, Ds' Evid.,
 24 Ex. 7.) When she purchased her children's clothes at Macy's, Merida would use her
 25 Macy's credit card, pay in cash or use her debit card. (Dkt. No. 97-6, Ps' Evid., Ex. 18,
 26

27 ³The parties do not state the ages of Jesus and his brother at the time of the
 28 incident. In the Court's prior order on summary judgment, Plaintiffs and Macy
 Defendants did not dispute that on the date of the incident Jesus was 7 years old and
 Marcos was 6 years old. (Dkt. No. 76-1, Ps' Am. Response to SSF, No. 2.)

1 Merida Depo. at 71:12-24.)

2 On May 25, 2004, a few months prior to Merida purchasing the Shirt, Ralph
3 Lauren entered into an Asset Purchase Agreement with RL Childrenswear Company,
4 LLC to reacquire its licenses back. (Dkt. No. 80-12, Ds' Evid., Ex. 8.) While the Asset
5 Purchase Agreement was dated May 25, 2004, it had a closing date of July 2, 2004.
6 (Dkt. No. 97-6, Ps' Evid., Ex. 31, Sam Schwab Depo. at 83:9-84:16.)

7 **B. Scientific Testing of the Shirt**

8 On December 17, 2015, the parties met at Seal Laboratories in El Segundo
9 California for all Defendants' inspection of the Shirt. (Dkt. No. 97-4, Weitz Decl. ¶ 2.)
10 In advance of the meeting, the parties agreed to an inspection and sampling protocol.
11 (Id.) Plaintiffs' counsel brought the remnants of the burned shirt to Seal Laboratories.
12 (Id.) It was decided that a qualified person at Seal Laboratories would cut four
13 samples of fabric from the shirt, each of roughly equal size. (Id.) Three of the samples
14 would be distributed among the parties to perform whatever analysis and testing the
15 respective experts deemed appropriate. (Id.) The fourth sample would be held by
16 Plaintiffs' counsel's firm and would not be subject to destructive testing unless agreed
17 to by all parties. (Id.) It was also agreed, at the request of Schwab Defendants' experts
18 and counsel, that they could select a fifth sample to take for testing. (Id.) The parties
19 did not make any agreements as to the methodology to be used during Defendants'
20 experts' inspection of the Shirt. (Id.)

21 Schwab Defendants' expert, Dr. David Howitt, was at Seal Laboratories for the
22 the inspection. (Dkt. No. 80-3, Howitt Decl. ¶ 8.) The remnants of the fabric was red
23 and white Gingham style cotton material and not a raised surface fiber fabric. (Id. ¶ 9.)
24 There were no labels or tags to identify the manufacturer, serial number or the country
25 of origin of the fabric. (Id.) Using a magnifying glass, the fabric and charred remains
26 were indicative of a simple cotton fabric. (Id. ¶ 10.)

27 The Consumer Products Safety Commission enacted regulations, 16 C.F.R. §
28

1 1610⁴ *et seq.*, concerning apparel flammability testing requirements to prevent
 2 dangerously flammable textiles and garments from entering the stream of commerce.
 3 (Id. ¶ 11.) Under the regulations, plain surface fabrics, regardless of fiber content,
 4 weighing 2.6 ounces per square yard or more are exempt from flammability testing and
 5 are not considered to be dangerously flammable. (Id. ¶ 15.)

6 At the inspection, Dr. Erik Richman of Seal Laboratories cut portions of the shirt
 7 to be weighted and distributed to each of the parties to conduct their own testing. (Id.
 8 ¶ 16.) Four separate samples were cut from the least damaged portions of the shirt to
 9 determine the weight of the fabric in unit area. (Id. ¶ 17.) The sample fabrics weighed
 10 between 3.41 to 3.58 ounces per square yard which exceeded the 2.6 ounces per square
 11 yard minimum required for flammability testing. (Id.)

12 Dr. Howitt noted that Dr. Xu's method of washing and oven drying a piece of
 13 Sample No. 2 producing an areal density between 2.51 and 2.79 ounces per square yard
 14 would signal that 28% of the weight was either excess water or a contaminant that
 15 could be removed by washing, but based on the strength of peaks in the FTIR⁵ spectra,
 16 it would not suggest the presence of a large amount of moisture. (Id.) When Dr.
 17 Howitt oven dried Sample No. 3, conditioned and weighed it, he discerned no weight
 18 change in sample 3 and the aerial density of the fabric was still at least 3.35 ounces per
 19 square yard. (Id.) According to Dr. Howitt, whichever weight measurement one
 20

21 ⁴16 C.F.R. § 1610 was promulgated under the Flammable Fabrics Act, 15 U.S.C.
 22 § 1191 *et seq.* The FFA, was enacted in 1953, and "as amended, prohibits the
 23 introduction or movement in interstate commerce of fabrics . . . which are flammable
 24 within a 'Standard' of flammability established by the Secretary of Commerce."
 25 Congoleum Indus., Inc. v. Consumer Prod. Safety Comm'n, 602 F.2d 220, 222 n.1 (9
 26 Cir. 1979). The "Standard for Flammability of Clothing Textiles" is codified at 16
 C.F.R. § 1610 whose purpose is to "reduce danger of injury and loss of life by
 providing, on a national basis, standard methods of testing and rating the flammability
 of textiles and textile products for clothing use, thereby prohibiting the use of any
 dangerously flammable clothing textiles." 16 C.F.R. § 1610.1.

27 While Plaintiffs challenge Defendants' expert conclusions of testing under the
 28 FFA, Plaintiffs also dispute that compliance with the FAA does not relieve Defendants
 of liability under state law negligence, warranty or products liability claims.

⁵Fourier Transform Infrared Spectroscopy. (Dkt. No. 97-2, Xu Decl. ¶ 3.)

1 wishes to adopt, the original fabric would have been exempt from flammability testing.
2 (Id.)

3 Next, Schwab Defendants sent its sample of the fabric to Forensic Analytical
4 Laboratories (“FAL”), an independent and reputable laboratory, to conduct fiber
5 identification analysis of the shirt using polarized light microscopy (“PML”) and FTIR
6 Spectroscopy. (Id. ¶ 19.) After testing, FAL concluded that “The swatch of fabric is
7 identified as containing 100% cotton fibers in an alternating red and white pattern.”
8 (Id. ¶ 21; Dkt. No. 80-13, Ds’ Evid., Ex. 9, FAL Report.) According to Dr. Howitt,
9 despite Dr. Xu’s conclusions conducting a similar FTIR examination noting the
10 presence of nylon, there is no evidence to suggest any nylon in any of the FTIR spectra.
11 (Id. ¶ 21.) Dr. Howitt disputes Dr. Xu’s opinion concerning the two peaks that are
12 more pronounced on the spectrum as indicating the presence of nylon and argues that
13 cotton fabrics often exhibit peaks at these points. (Id.)

14 In addition, Dr. Howitt’s review of the SEM conducted by Plaintiffs’ expert, Dr.
15 David Hall, revealed no evidence of nylon fibers in the fabric; in fact, Dr. Hall’s
16 conclusion that the shirt was made of a blend of 90% cotton and at least 4-5% nylon
17 and at least 5-6% rayon based on the SEM micrographs suggest a very different
18 composition consisting of 60-70% cotton, 3-5% nylon and 25-35% rayon based on his
19 coloring of the fibers. (Id. ¶ 22.)

20 Dr. Howitt concluded that Plaintiffs’ experts opinion that 5% nylon and 6%
21 rayon will burn more vigorously and cause more severe injuries is inaccurate; instead
22 the key to determining why a material is burning vigorously is to focus on the strength
23 of the ignition source and the geometrical configuration of the material. (Id. ¶¶ 24-25.)

24 In response, Plaintiffs present their expert, Dr. David Xu, Ph.D., to dispute the
25 findings of Dr. Howitt. Dr. Xu determined that based on his testing, the Shirt was not
26 100% pure cotton. (Dkt. No. 97-2, Xu Decl. ¶ 3.) Microscopic analysis is
27 indispensable for positive identification of rayon versus cotton fibers and
28 distinguishing these fibers from other man-made fiber types. (Id. ¶ 6.) A Scanning

1 Electron Microscope (“SEM”) is “capable of producing a very high-resolution, detailed
2 images of the complete fiber surface at high magnification” and is the least destructive
3 method to identify fiber content. (Id.) Having reviewed the SEM images of the Shirt
4 taken by Dr. David Hall, Dr. Xu agreed with Dr. Hall’s assessment that the Shirt is
5 composed of a blend of cotton, rayon, and nylon fibers. (Id. ¶ 7.)

6 Then, Dr. Xu performed a multi-component FTIR and concluded the Shirt
7 contained at least 4% nylon fibers. (Id. ¶¶ 8-14.) Dr. Xu notes that Dr. Howitt did not
8 analyze the FTIR spectrogram for the presence of nylon. However, Macy Defendants’
9 experts admit the Shirt contains about 5% rayon but they failed to look for nylon. (Id.
10 ¶ 14.) The SEM and FTIR demonstrate that Shirt is composed of about 90% cotton, 4-
11 5% nylon, and 5-6% rayon. (Id. ¶ 3.)

12 According to Dr. Xu, FAL’s testing upon which Dr. Howitt relied upon to form
13 his opinions concerning the fabric content of the Shirt did not conform its testing to
14 AATCC Test Method 20A, the accepted industry standard for identifying the generic
15 classification of common fiber types. (Id. ¶¶ 37-40.) In fact, FAL’s report does not
16 reference AATCC Test Method 20A; instead, its testing was biased towards an
17 erroneous finding that the Shirt was 100% cotton fibers. (Id. ¶¶ 37, 38.)

18 Dr. Xu also measured the areal density of the Shirt using ASTM Test Method
19 D3776. (Id. ¶ 29.) According to Xu, ASTM Test Method D3776 is the industry
20 standard method for measuring the areal density of fabric. (Id.) Based on ASTM Test
21 Method D3776, which requires that the fabric be conditioned prior to measuring, and
22 measuring the fabric according to ASTM Test Method D3774, Xu calculated the
23 weight of Sample 2 to be between 2.51 and 2.79 ounces per square yard. (Id. ¶¶ 29, 31,
24 34.) Dr. Xu disputes the areal density measurements calculated by Defendants’
25 experts, Dr. Erik Richman and Dr. Howitt, as inaccurate as it does not reflect the true
26 weight of the fabric. (Id. ¶ 36.) Based on his measurement, it cannot be said that the
27 Shirt is exempt from the flammability testing requirements under 16 C.F.R. § 1610.
28 (Id.)

1 Dr. Xu opines that the blend of nylon, rayon and cotton fibers resulted in a net
 2 cost savings to Schwab Defendants and an increased risk to Jesus. (Id. ¶¶ 15-27.) He
 3 concluded that Defendants’ decision to use a blend of fibers placed Jesus at a greater
 4 risk for severe burns because rayon shrinks and adheres to a child’s skin and nylon
 5 melts to the skin. (Id. ¶ 3, 24-25.) He explained that the blend of cotton, nylon and
 6 rayon made the fabric more flammable and dangerous than if the shirt were 100%
 7 cotton and increased the potential for injury. (Id. ¶ 3)

8 Discussion

9 A. Legal Standard on Motion for Summary Judgment

10 Federal Rule of Civil Procedure 56 empowers the Court to enter summary
 11 judgment on factually unsupported claims or defenses, and thereby “secure the just,
 12 speedy and inexpensive determination of every action.” Celotex Corp. v. Catrett, 477
 13 U.S. 317, 325, 327 (1986). Summary judgment is appropriate if the “pleadings,
 14 depositions, answers to interrogatories, and admissions on file, together with the
 15 affidavits, if any, show that there is no genuine issue as to any material fact and that the
 16 moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact
 17 is material when it affects the outcome of the case. Anderson v. Liberty Lobby, Inc.,
 18 477 U.S. 242, 248 (1986).

19 The moving party bears the initial burden of demonstrating the absence of any
 20 genuine issues of material fact. Celotex Corp., 477 U.S. at 323. The moving party can
 21 satisfy this burden by demonstrating that the nonmoving party failed to make a showing
 22 sufficient to establish an element of his or her claim on which that party will bear the
 23 burden of proof at trial. Id. at 322-23. If the moving party fails to bear the initial
 24 burden, summary judgment must be denied and the court need not consider the
 25 nonmoving party’s evidence. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-60
 26 (1970).

27 Once the moving party has satisfied this burden, the nonmoving party cannot rest
 28 on the mere allegations or denials of his pleading, but must “go beyond the pleadings

1 and by her own affidavits, or by the ‘depositions, answers to interrogatories, and
 2 admissions on file’ designate ‘specific facts showing that there is a genuine issue for
 3 trial.’” Celotex, 477 U.S. at 324. If the non-moving party fails to make a sufficient
 4 showing of an element of its case, the moving party is entitled to judgment as a matter
 5 of law. Id. at 325. “Where the record taken as a whole could not lead a rational trier
 6 of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’”
 7 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In
 8 making this determination, the court must “view[] the evidence in the light most
 9 favorable to the nonmoving party.” Fontana v. Haskin, 262 F.3d 871, 876 (9th Cir.
 10 2001). The Court does not engage in credibility determinations, weighing of evidence,
 11 or drawing of legitimate inferences from the facts; these functions are for the trier of
 12 fact. Anderson, 477 U.S. at 255.

13 Schwab Defendants move for summary judgment on all causes of action⁶ because
 14 the optical, microscopy and laboratory analysis of the Shirt confirms there were no
 15 defects that rendered it dangerously flammable and there is no evidence the
 16 Defendants manufactured the Shirt. Next, they move for summary judgment as to the
 17 individual defendants, Samuel Schwab, Doug Schwab, L. Tadd Schwab and Amy
 18 Owens, because Plaintiffs failed to present facts to justify piercing the corporate veil
 19 in order to hold these defendants personally liable.

20 **A. Manufacturing Defect, Breach of Implied Warranties, Design Defect,**
 21 **Failure to Warn and Negligence**

22 As a threshold issue, Schwab Defendants contend that there is no evidence that
 23 they manufactured the Shirt and Plaintiffs have not produced any documents
 24 evidencing proof of purchase of the Shirt. Jesus’ mother, Merida, testified that on the
 25 day she purchased the Shirt, she had a Macy’s card. (Dkt. No. 80-8, Ds’ Evid., Ex. 4,
 26 Merida Depo. at 54:2-5.) However, Macy’s has no record of the purchase as it

27 ⁶The Court notes that while Schwab Defendants state they move on all causes
 28 of action, they have not moved for summary judgment on the claim for negligent
 misrepresentation. (Dkt. No. 80-1.)

1 produced statements which did not show the subject Ralph Lauren shirt but shows
2 clothing by Tommy Hilfiger. (Dkt. No. 80-11, Ds' Evid., Ex. 7, Macy's Receipts.)
3 Moreover, on May 25, 2004, Ralph Lauren entered into an Asset Purchase Agreement
4 with RL Childrenswear Company, LLC to reacquire its license back from RL
5 Childrenswear. Because Merida purchased the shirt three months after the Asset
6 Purchase Agreement, Plaintiffs cannot show that Schwab Defendants manufactured the
7 Shirt. Lastly, since the remnants of the shirt were charred, there is no evidence who
8 manufactured the shirt as there were no labels or tags. (Dkt. No. 80-3, Howitt Decl. ¶
9 9; Dkt. No. 80-10, Ds' Evid., Ex. 10, photograph of shirt.)

10 Plaintiffs respond by presenting facts to dispute Schwab Defendants' allegations.
11 Merida testified that when she purchased the shirt at Macy's, while she had her Macy's
12 card with her, she does not remember how she paid for the shirt. (Dkt. No. 97-6, Ps'
13 Evid., Ex. 18, Merida Depo. at 33:4-12; Dkt. No. 80-8, Ds' Evid., Ex. 4, Merida Depo.
14 at 54:6-9.) She stated that when she shopped at Macy's in 2004 she paid by cash, credit
15 or debit. (Dkt. No. 97-6, Ps' Evid., Ex. 18, Merida Depo. 71:12-24.) In addition,
16 Marcos was photographed wearing the Shirt, with its trademark Polo logo. (Dkt. No.
17 97-5, Ps' Evid., Ex. 6.)

18 Furthermore, RL Childrenswear held a license from Polo Ralph Lauren to
19 manufacture and sell Ralph Lauren brand boys 4-20 products, including woven shirts.
20 (Dkt. No. 97-8, Ps' Evid., Ex. 32, T. Schwab Depo. at 61:24-63:3; 63:17-64:16.) RL
21 Childrenswear manufactured Ralph Lauren boys woven gingham style shirts like the
22 Shirt. (Dkt. No. 97-7, Ps' Evid., Ex. 31, Sam Schwab Depo at 84:19-85:13.) Schwab
23 Defendants sold the license back to Ralph Lauren in a transaction that closed on July
24 2, 2004. (Id. at 83:9-84:16.) At closing, the transition inventory already manufactured
25 by Schwab Defendants including work in progress at factories overseas, remained to
26 be shipped to department stores such as Macy's. (Id. at 55:23-56:12; 88:5-89:12.)
27 Merida purchased the Shirt during the same time period near the closing around July
28 or August 2004. (Dkt. No. 97-6, Ps' Evid., Ex. 18, Merida Depo. at 35:1-11.)

1 Therefore, Plaintiffs raise an issue of fact that the Shirt could have been manufactured
 2 by Schwab Defendants as part of existing inventory or product that would soon be
 3 shipped under the license and transition agreements. Through Merida's testimony,
 4 Plaintiffs also create a genuine issue of fact as to whether Merida purchased the Shirt
 5 at Macy's. In sum, Plaintiffs have presented evidence to create a genuine issue of
 6 material fact that Schwab Defendants manufactured the Shirt and that Jesus' mother
 7 purchased the Shirt at Macy's.

8 Next, Schwab Defendants move for summary judgment on the manufacturing
 9 defect claim, breach of implied warranties, design defect, failure to warn and
 10 negligence⁷ claims based on the opinions of their expert, Dr. Howitt, arguing that the
 11 Shirt was not defective. (Dkt. No. 80-1 at 14, 17-18.) Plaintiffs respond by producing
 12 Dr. Xu's expert opinion raising a genuine issue of material fact as to whether the Shirt
 13 was defective and whether it was mislabeled as 100% cotton since the Shirt did not
 14 perform as expected when it burned.⁸

15 In the Court's prior order denying Defendants Macy and Ralph Lauren's motion
 16 for summary judgment, it found that the conflicting expert evidence presented by both
 17 parties created a genuine issue of material fact. (Dkt. No. 94 at 8-9.) As explained in
 18 the Court's prior order on summary judgment, expert affidavits from both parties can
 19 create a genuine issue of fact that defeats summary judgment and the Ninth Circuit has
 20 cautioned against granting summary judgment where expert guidance is needed and
 21 where there are competing expert declarations. See Garter-Bare Co. v. Munsingwear,

23 ⁷Schwab Defendants also argue that the negligence claim fails because Plaintiffs
 24 cannot prove who manufactured or sold the shirt. Because the Court concludes that
 25 there are genuine issues of material fact whether Schwab Defendants manufactured the
 26 Shirt at issue, the Court also DENIES the negligence claim based on this argument.

26 ⁸Plaintiffs filed evidentiary objections as to the declaration of Dr. Howitt. (Dkt.
 27 No. 97-9.) Schwab Defendants also filed evidentiary objections to Dr. Xu and Dr.
 28 Ellison. (Dkt. No. 98-2.) The Court notes the evidentiary objections. To the extent
 that the evidence is proper under the Federal Rules of Evidence, the Court considered
 the evidence. To the extent that the evidence is not proper, the Court did not consider
 it.

1 Inc., 650 F.2d 975, 979-80, 982 (9th Cir. 1980) (reversing a district court's grant of
 2 summary judgment where the parties provided conflicting expert testimony and the
 3 district court granted summary judgment by relying solely on the moving party's expert
 4 testimony); DeLew v. Adamson, 293 F. App'x 504, 506 (9th Cir. Sept. 17, 2008) ("The
 5 existence of conflicting expert assessments suggests that neither party is entitled to
 6 summary judgment."); see also Ethyl Corp. v. Borden, Inc., 427 F.2d 206, 210 (3d Cir.
 7 1970) (Courts may not resolve "disputed and relevant factual issues on conflicting
 8 affidavits of qualified experts."). "As a general rule, summary judgment is
 9 inappropriate where an expert's testimony supports the non-moving party's case."
 10 Provenz v. Miller, 102 F.3d 1478, 1490 (9th Cir. 1996) (quoting In re Worlds of
 11 Wonder Sec. Litig., 35 F.3d 1407, 1425 (9th Cir. 1994)).

12 In this case, Schwab Defendants present Dr. Howitt's declaration and supporting
 13 exhibits to support their conclusion that the Shirt is not defective. In response,
 14 Plaintiffs present facts, through their expert, Dr. Xu, disputing Dr. Howitt's conclusion.
 15 Plaintiffs have met their burden demonstrating there are genuine issues of material fact,
 16 and the Court DENIES Defendants' motion for summary judgment on the causes of
 17 action for manufacturing defect, breach of the implied warranties, design defect, failure
 18 to warn and negligence.

19 **C. Motion for Summary Judgment as to the Individually Named Defendants**

20 Schwab Defendants also argue that summary judgment should be granted as to
 21 the individually named Defendants, Samuel Schwab, Douglas Schwab, Tadd Schwab,
 22 and Amy Owens, because Plaintiffs have failed to allege any facts or evidence that the
 23 Court should invoke the alter ego doctrine and pierce the corporate veil. In response,
 24 Plaintiffs argue that genuine issues of material fact exist as to whether the individual
 25 Defendants are personally liable under an alter ego theory.

26 It is a general principal that a parent corporation and its stockholders, officers
 27 and directors will be treated as separate legal entities with separate and distinct
 28 liabilities and obligations. Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th

523, 538 (2000). The corporate veil may be pierced “where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation.” Sonora Diamond Corp., 83 Cal. App. 4th at 538. “Under the alter ego doctrine, then, when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation’s acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners.” Id. (citations omitted).

In California, two conditions must both be met in order to invoke the alter ego theory: (1) a unity of interest and ownership must exist between the corporation and its equitable owner such that there does not exist a separateness between them;⁹ and (2) “there must be an inequitable result if the acts in question are treated as those of the

⁹Factors to consider are the following which are nonexhaustive: “[c]ommingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses . . . ; the treatment by an individual of the assets of the corporation as his own . . . ; the failure to obtain authority to issue stock or to subscribe to or issue the same . . . ; the holding out by an individual that he is personally liable for the debts of the corporation . . . ; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities . . . ; the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family . . . ; the use of the same office or business location; the employment of the same employees and/or attorney . . . ; the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization . . . ; the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation . . . ; the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities . . . ; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities . . . ; the use of the corporate entity to procure labor, services or merchandise for another person or entity . . . ; the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another . . . ; the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions . . . ; and the formation and use of a corporation to transfer to it the existing liability of another person or entity” Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 811-12, (2010). “No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine.” Id. at 812

corporation alone.” Sonora Diamond Corp., 83 Cal. App. 4th at 538 (citations omitted). Piercing the corporate veil is an extreme remedy that should be used sparingly. Id. at 539. Plaintiff bears the burden to establish the corporate veil should be pierced. Wady v. Provident Life and Accident Ins. Co. of America, 216 F. Supp. 2d 1060, 1066 (C.D. Cal. 2002).

The alter ego doctrine prevents fraud or other misdeeds and cannot be invoked without evidence of injustice or wrongdoing. Sonora Diamond Corp., 83 Cal. App. 4th at 539. While actual fraud is not required, “bad faith in one form or another is an underlying consideration.” Associated Vendors, Inc. v. Oakland Meat Co., Inc., 210 Cal. App. 2d 825, 838 (1962). Mere difficulty in enforcing a judgment or collecting a debt does not satisfy the requirement for misconduct or injustice. Sonora Diamond Corp., 83 Cal.App.4th at 537. Whether a party is liable under an alter ego theory is typically a question of fact. Leek v. Cooper, 194 Cal. App. 4th 399, 418 (2011); Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 811 (2010). In Associated Vendors, the court noted that where disregarding the corporate entity was warranted, several unity of interest factors were present and supported by substantial evidence. Associated Vendors, 210 Cal. App. 2d at 840.

1. Unity of Interest

Plaintiffs argue that certain factors support the unity of interest factor. Before conducting an analysis, the Court explains the role of each Schwab entity Defendant and each individually named Defendant as presented by Plaintiffs’ evidence.

RL Childrenswear obtained the license from Ralph Lauren to sell its children’s clothing. (Dkt. No. 97-6, Ps’ Evid., Ex. 31, S. Schwab Depo. at 24:9-25.) Sylvia Company was a holding company for RL Childrenswear and its sole asset was 100 percent of the stock of RL Childrenswear. (Id. at 34:14-23.) CUNY Associates was set up to allow non-family employees to share in the profits of RL Childrenswear. (Id. at 35:20-36:16.) LM Services was the entity in which all employees were employed so employees who did work in connection with the license with Ralph Lauren received

1 their paychecks from LM Services. (Id. at 36:20-37:18.) LM Services contracted with
 2 RL Childrenswear for the services of LM Services' employees. (Id. at 36:24-37:3.)
 3 RL Childrenswear, Sylvia Company and CUNY Associates did not have any
 4 employees. (Id. at 37:12-14; 38:17-24.) All the entities had the same office location
 5 in Cumberland Park, Maryland. (Id. at 41:9-14.) Shortly after and pursuant to the
 6 Asset Purchase Agreement, RL Childrenswear, Sylvia Company, CUNY Associates,
 7 and LM Services¹⁰ ceased doing business, and do not have any bank accounts or assets.
 8 (Dkt. No. 97-6, Ps' Evid., Ex. 31, S. Schwab Depo. at 32:11-24; 35:5-11; 36:5-6;
 9 113:18-114:19; see also Dkt. No. 98-1, Schwab Ds' Response to Ps' Add'l SSF Nos.
 10 140, 142, 147.)

11 S. Schwab Company is still a business and has assets and a bank account. (Dkt.
 12 No. 97-6, Ps' Evid., Ex. 31, S. Schwab Depo. at 113:1-21.) Samuel Schwab is
 13 currently President of S. Schwab Company which is currently an asset holding
 14 company and no longer involved in the business of children's clothing. (Id. at 13:7-14;
 15 21:6-17.) Today, S. Schwab Company invests its own assets and funds. (Dkt. No. 97-
 16 7, Ps' Evid., Ex. 33, Owens Depo. at 26:4-6.) Samuel Schwab does not know if there
 17 are any other officers or directors and whether there is a board of directors for S.
 18 Schwab Company but noted there was a board of directors 15 years ago. (Dkt. No. 97-
 19 6, Ps' Evid., Ex. 31, S. Schwab Depo. at 13:15-25; 14:4-6.)

20 Samuel Schwab was also President of CUNY Associates, (Id. at 36:17-19.)
 21 Doug Schwab was VP of Technology for LM Services. (Id. at 43:12-15.) Tadd
 22 Schwab was the VP of Quality and Compliance for RL Childrenswear. (Dkt. No. 97-7,
 23 Ps' Evid., Ex. 32, T. Schwab Depo. at 12:6-9.) Samuel Schwab gave Tadd Schwab the
 24 title of VP of Quality and Compliance. (Id. at 19:17-18.) Amy Owens became VP of
 25 the Schwab Company. (Dkt. No. 97-7, Ps' Evid., Ex. 33, Owens Depo. at 21:4-7.)
 26 Douglas Schwab held numerous titles at S. Schwab Company such as corporate

27 ¹⁰LM Services ceased doing business when it sold its last children's wear
 28 operating company around 2007. (Dkt. No. 97-6, Ps' Evid., Ex. 31, S. Schwab Depo.
 at 39:4-11.)

1 secretary, a systems manager, IT manager and VP of IT. (Dkt. No. 97-7, Ps' Evid., Ex.
2 34, D. Schwab Depo. at 16:9-22.) He also served as VP of RL Childrenswear and was
3 probably the corporate secretary of Sylvia Company. (Id. at 18:22-23; 19:7-10.)

4 **a. Sole ownership by an individual or members of a family;**

5 Plaintiffs argue that the individual defendants, who are all cousins and brothers,
6 were the primary owners, officer, member and directors of the Schwab entities. In
7 support, they only state that Samuel Schwab was Sylvia Company's President and was
8 CUNY Associates' President. (Dkt. No. 97-6, Ps' Evid., Ex. 31, S. Schwab Depo. at
9 35:7-11; 36:17-19.) Defendants reply that mere ownership and leadership role in the
10 entities' affairs is not sufficient to pierce the corporate veil.

11 Ownership of an interest in the corporation is a threshold question under the alter
12 ego doctrine because if an individual's ownership is not established, the corporations'
13 obligations cannot be imposed on him or her. Riddle v. Leuschner, 51 Cal. 2d 574, 580
14 (1959) (husband, who was a managing employee held no stock so the alter ego did not
15 apply to him despite his involvement in conduct at issue); SEC v. Hickey, 322 F.3d
16 1123, 1128 (9th Cir. 2003) ("[o]wnership is a prerequisite to alter ego liability").

17 In this case, the Court notes that in their brief, Plaintiffs have not presented
18 evidence that the individual Defendants have an ownership interest in the corporations.
19 In their Separate Statement of Facts, Plaintiffs refer to the individual Defendants as
20 officers, members, or agents. (Dkt. No. 98-1, Ds' Response to Ps' Add'l SSF Nos. 134-
21 194.) The only alleged fact as to ownership is Douglas Schwab's testimony that he
22 signed the Asset Purchase Agreement based on his understanding that he was a
23 shareholder in the S. Schwab Company. (Dkt. No. 98-1, Ds' Response to Ps' Add'l
24 SSF No. 194 (citing Dkt. No. 97-7, Ps' Evid., Ex. 34, D. Schwab Depo. at 40:7-41:7).)
25 After the Court's review of the record, it came upon the fact that the shareholders of
26 the S. Schwab Company, Inc. consisted of family members, including individually
27
28

1 named Defendants Amy Owens, Doug Schwab, and Tadd Schwab.¹¹ (Dkt. No. 97-6,
 2 Ps' Evid., Ex. 31, S. Schwab Depo. at 21:18-22:10.) This fact only applies to
 3 ownership in S. Schwab Company and not the other Schwab entity Defendants.
 4 Ownership by a members of a family supports the unity of interest factor as to S.
 5 Schwab Company and the individually named Defendants but not as to the other entity
 6 Defendants.

7 **b. Use of the entities as mere shells, instrumentalities, or conduits**
 8 **for a single venture;**

9 Plaintiffs argue that each Schwab entity Defendant was created to serve a
 10 specific narrow purpose within the "family business" of manufacturing childrenswear
 11 under the Ralph Lauren label. For example, RL Childrenswear Company, LLC was
 12 formed for the sole purpose of holding the license to manufacture Ralph Lauren
 13 children's clothing and had no employees. LM Services, LLC, was formed and
 14 employed everyone who worked as an employee of the Schwab entities, regardless of
 15 which brand they worked on. CUNY Associates, LLC, was set up solely for the
 16 purpose of allowing non-family member employees of the Schwab Enterprise to share
 17 in the profits of the Ralph Lauren childrens clothing line. Sylvia Company was a
 18 formed solely as a holding company for RL Childrenswear, and its sole asset was 100%
 19 ownership of RL Childrenswear. Sylvia Company, like RL Childrenswear, never had
 20 any employees. Plaintiffs argue that these entities were created to insulate Schwab
 21 assets from Schwab liabilities. In reply, Schwab Defendants argue that the entities
 22 were structured to serve various and legitimate purposes concerning the childrenswear
 23 business and is a prudent business plan common to many well-known corporations.

24 In Aliya Medicare Finance, LLC v. Nickell, No. 14-7806 MMM(Ex), 2015 WL
 25 11072180 (C.D. Cal. Sept. 25, 2015), the Court denied defendant's motion to dismiss
 26

27 ¹¹While Samuel Schwab did not testify that he was a shareholder of S. Schwab
 28 Company, it is assumed that Samuel Schwab was also a shareholder since family
 members were all shareholders. (Dkt. No. 97-6, Ps' Evid., Ex. 31, S. Schwab Depo.
 at 21:18-22:10.)

1 where the plaintiff alleged facts that the owner of the entities treated the assets of
 2 several entities as his own. Id. at 21. The defendant swept one of the entity's bank
 3 account every month and paid all remaining funds to himself, drained any cash that the
 4 corporation received, and although the corporation made over 10 million in profits
 5 since 2012, it had no money. Id. The entity had no employees or managers except the
 6 owner suggesting that he controlled the entity completely and there were also allegation
 7 that the defendant commingled the entity's funds with his funds. Id.

8 Here, Plaintiffs merely assert facts to demonstrate the different roles of each
 9 corporate Defendant in the childrenswear business and present no facts of any
 10 fraudulent activity or misconduct to use the corporate structure by the individually
 11 named Defendants. See Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th 1269,
 12 1285 (1994) ("Alter ego is a limited doctrine, invoked only where recognition of the
 13 corporate form would work an injustice to a third person.").

14 **c. Identification of the equitable owners with the domination and**
 15 **control of the entities;**

16 Plaintiffs assert that the individual Defendants had an ownership and leadership
 17 role that lead to the chain of events leading to Jesus' injury Samuel Schwab was
 18 responsible for the day to day operations of RL Childrenswear and other Schwab
 19 entities. Tadd Schwab oversaw global quality assurance for the Ralph Lauren
 20 Childrenswear brand. Tadd and Samuel developed the fabric content testing protocols
 21 and Tadd was responsible for implementing those policies

22 "[The] mere fact of sole ownership and control does not eviscerate the separate
 23 corporate identity that is the foundation of corporate law." Katzir's Floor & Home
 24 Design, Inc. v. M-MLS.com, 394 F.3d 1143, 1149 (9th Cir. 2004).

25 Here, Plaintiffs provide conclusory allegations concerning equitable owners with
 26 domination and control over the entities. First, they have not demonstrated that any of
 27 the individual defendants are owners of the entity Defendants except for S. Schwab
 28 Company. Next, Plaintiffs only present arguments concerning domination and control

as to Samuel Schwab and Tadd Schwab, and not as to Amy Owens or Douglas Schwab. Moreover, mere ownership and control does not support this factor.

d. Personal assumption of liability on a related obligation; and

Plaintiffs argue that the individual Defendants already assumed contractual liability for the claims alleged in this case as they were parties to the Asset Purchase Agreement between RL Childrenswear Company and Polo Ralph Lauren Corporation. (Dkt. No. 97-7, Ps' Evid., Ex. 40.) Section 10.1(c) of the Asset Purchase Agreement provides that the individual defendants are responsible for certain losses, claims, liabilities, and damages including those arising from litigation resulting the Schwab Defendants' operation of the children's clothing business they were selling back to Polo Ralph Lauren. (*Id.*, Ex. 40 at § 10.1(c).) In response, Schwab Defendants argue that the Agreement identifies Seller Affiliate Group solely for purposes of sections 3.5, 6.14, 6.15, 6.18, Article X and XII¹² and the individual Defendants were not parties to section 10.1 of the Agreement.

The Seller Affiliate Group includes Sylvia Company, CUNY Associates, LM Services, S. Schwab Company, and Samuel Schwab, Douglas Schwab, Tadd Schwab and Amy Owens. (Dkt. 80-12, Ds' Evid., Ex. 8 at 19.)

Subject to the limitations contained in Section 10.5, the Seller and the Seller Affiliate Group (collectively, the "**Seller Indemnifying Parties**", jointly and severally, agree to indemnify, defend and hold harmless the Buyer (and any of its officers, directors, employees, stockholders, Affiliates, successors and assigns) (the "**Buyer Indemnified Parties**") from and against any losses, claims, liabilities, damages, judgments, assessments, fines, costs, expenses or deficiencies (including reasonable fees, expenses and disbursements of attorneys, experts, personnel and consultants incurred by the party entitled to indemnification under this Article X), whether or not involving Litigation by a third party, (collectively, "Losses") based upon, arising out of, due to or otherwise in respect of: . . . (c) the operation of the Business at any time during the period prior to and including the Closing, including the operation of the Business by the Prior Licensee. (as defined in the License) (other than any Loss that constitutes an Assumed Liability)."

¹²The Court notes that Schwab Defendants merely cite to the Agreement without providing a citation to this provision in this 59 page document. (Dkt. No 80-12, Ds' Evid., Ex. 8.) After a careful review, the Court was able to locate this provision.

(Id. § 10.1(c).) The indemnification provision specifically lists “Seller Affiliate Group” as part of the indemnification provision. At the end of the document, at the top of the signatures for the Seller Affiliate it states, “For the purposes of Section 3.5, 6.14, 6.15, 6.18 and Article X and Article XII only.” However, contrary to Schwab Defendants’ argument, Article X includes section 10.1 concerning indemnification. (See id.) Therefore, the Court concludes this factor supports a unity of interest.

e. Total absence of corporate assets

Plaintiffs argue that the Schwab entity Defendants are no longer in operation and lack any corporate assets. Defendants reply that their arguments are based on speculation.

The absence of assets alone does not justify an alter ego determination. Bank of Montreal v. SK Foods, LLC, 476 B.R. 588, 600 (N.D. Cal. 2012) (noting that absence of assets does not alone justify alter ego determination, the knowing transfer of assets away from potential liabilities raises concerns). In Associated Vendors, the court noted that in almost every instance where the trial court found inadequate capitalization, other factors were present. Associated Vendors, 210 Cal. App. 2d at 841. It held that inadequate capitalization, itself, is not sufficient to pierce the corporate veil. Id. at 842 (“the purpose of [piercing the corporate veil] is not protect every unsatisfied creditor, but rather to afford him protection, where some conduct amounting to bad faith makes it inequitable . . . for the equitable owner of a corporation to hide behind its corporate veil.”)

Here, according to Plaintiffs, after the Purchase Asset Agreement, the Schwab entities shut down. However, each of the entities still lists Cumberland Park, Maryland as its business address even though they no longer conduct business and Doug Schwab remains listed with the Maryland Secretary of States as the registered agent for service of process; however the entity defendants are no longer in good standing and the state of Maryland has forfeited their rights to conduct business. None of the entities have any assets. Schwab Defendants respond that Plaintiffs’ argument that the entities lack any

1 corporate assets is based on pure speculation because there is no evidence of lack of
2 corporate assets at the time of the incident.¹³

3 Here, Plaintiffs point to no evidence that the absence of assets or inadequate
4 capitalization was the result of any misconduct. Instead, it appears that the entities
5 stopped operating after the Asset Purchase Agreement as they were required to halt
6 their involvement in the Ralph Lauren childrens' clothing business. This factor does
7 not support the unity of interest prong.

8 Based on a review of the factors Plaintiffs rely upon, the Court concludes that
9 the unity of interest prong has not been met. However, even if the unity of interest
10 factor has been met, Plaintiffs have not satisfied the second prong of "inequitable"
11 results. See Sonora Diamond Corp., 83 Cal. App. 4th at 530 (even if there is a
12 sufficient unity of interest, the alter ego doctrine cannot be invoked without evidence
13 of misconduct or an injustice flowing from recognition of the separate corporate entity).

14 **2. "Inequitable Result" Prong**

15 Plaintiffs next argue that the "injustice" factor is met where the entities are
16 insolvent leaving Jesus, a severely injured young man, with no other way to satisfy a
17 valid judgment. Schwab Defendants allege that Plaintiffs have failed to satisfy the
18 "injustice" element.

19 The "inequitable result" prong of alter ego liability addresses circumstances
20 where "adherence to the fiction of the separate existence of the corporation would,
21 under the particular circumstances, sanction a fraud or promote injustice." First
22 Western Bank & Trust Co. v. Bookasta, 267 Cal. App. 2d 910, 914-15 (1968) (citations
23 omitted); Neilson v. Union Bank of Cal., N.A., 290 F. Supp. 2d 1101, 1117 (C.D. Cal.
24 2003) ("California courts generally require some evidence of bad faith conduct on the
25 part of defendants before concluding that an inequitable result justifies an alter ego
26 finding."); Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc., 99 Cal. App. 4th 228, 245

27
28 ¹³Schwab Defendants also assert that Plaintiffs know they are insured; however,
no evidence is provided to support this assertion.

(2002) (“[A]lter ego will not be applied absent evidence that an injustice would result from the recognition of separate corporate identities, and ‘[d]ifficulty in enforcing a judgment or collecting a debt does not satisfy this standard.’”)

As explained in Associated Vendors, “[c]ertainly, it is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced, and thus set up such an unhappy circumstance as proof of an ‘inequitable result.’ In almost every instance where a plaintiff has attempted to invoke the doctrine he is an unsatisfied creditor. The purpose of the doctrine is not to protect every unsatisfied creditor, but rather to afford him protection, where some conduct amounting to bad faith makes it inequitable, under the applicable rule above cited, for the equitable owner of a corporation to hide behind its corporate veil.” Associated Vendors, 210 Cal. App. 2d at 842.

Here, Plaintiffs’ sole argument to support the “inequitable” prong is Schwab Defendants’ inability to compensate Jesus for his injuries based on the fact that most of the entity Defendants are no longer operating or have any asserts. However, such a reason, absent any evidence of bad faith or misconduct, is not sufficient to satisfy the second prong and Plaintiffs have not demonstrated a genuine issue of fact that the “inequitable” prong has been met. See id.

Since both factors of alter ego have not been met, the Court GRANTS Schwab Defendants’ motion for summary judgment as to the individual named Defendants.

D. Request for Judicial Notice

Plaintiffs also filed a request for judicial notice of regulations of the FAA. (Dkt. No. 97-8.) The Court GRANTS Plaintiffs’ request for judicial notice as unopposed.


Conclusion

Based on the above, the Court GRANTS in part and DENIES Schwab Defendants’ motion for summary judgment. The Court DENIES Schwab Defendants’ motion for summary on the causes of action for manufacturing defect, design defect, failure to warn, negligence and breach of warranty and GRANTS Schwab Defendants’

1 motion for summary judgment as to the individually named Defendants. The hearing
2 date set for December 9, 2016 shall be **vacated**.

3 IT IS SO ORDERED.

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5 DATED: December 6, 2016

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7 HON. GONZALO P. CURIEL
8 United States District Judge
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